

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH**

**FIRST APPEAL NO. 124 OF 2018**

The Executive Engineer,  
Bembla Project Division,  
Yavatmal.

... APPELLANT

Versus

1. Chandrakant Jagpal Thakare,  
aged about 51 years;
2. Arvind Jagpal Thakare,  
aged about 48 years;
3. Vijay Jagpal Thakare,  
aged about 66 years;

Respondent Nos. 1 to 3 – occupation  
Not known, r/o Khadaksawanga, Tq.  
Babhulgaon, District – Yavatmal.

4. Gumbhabai Babanrao Pardakhe,  
aged about 66 years, occupation -  
Not known, r/o Thalegaon, Tq.  
Babhulgaon, District – Yavatmal.
5. Shobhatai Sheshrao Ingole,  
aged about 63 years, occupation  
Not known, r/o Kharda (Gawandi),  
Tq. Babhulgaon, District – Yavatmal.
6. Alka Rambhau Chaudhari,  
aged about 56 years, occupation -  
Not known, r/o Behind Saoji  
Building, Imamwada Road, Ghat  
Road, Nagpur.
7. Lata Ramdas Dakhore,  
aged about 53 years, occupation -  
Not known, r/o Akola Bazar,

District – Yavatmal.

8. Prabhatai Manikrao Khodke,  
aged about 70 years, occupation  
Not known, r/o Belgaon, Tq.  
Selu (Dhorad), District – Yavatmal.

9. Vrunda Gajananrao Butale,  
aged about 44 years, occupation -  
Not known, r/o Deurwadi, Tq.  
Arni, District – Yavatmal.

10.State of Maharashtra  
through the Collector, Yavatmal.

11.The Collector, Yavatmal.

12.Special Land Acquisition Officer,  
Minor Irrigation Works No. 1,  
Yavatmal.

... RESPONDENTS

Shri Mangesh A. Kadu, Advocate for the appellant.

Shri A.B. Nakshane, Advocate for respondent Nos. 1 to 9.

Ms. T. Khan, AGP for respondent Nos. 10 to 12.

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**CORAM :** A.S. CHANDURKAR &  
PUSHPA V. GANEDIWALA, JJ.

**ARGUMENTS HEARD :** MARCH 04, 2021.

**JUDGMENT PRONOUNCED :** MARCH 08, 2021.

**JUDGMENT :** (PER : PUSHPA V. GANEDIWALA, J.)

Heard Shri Mangesh A. Kadu, learned counsel for  
the appellant, Shri A.B. Nakshane, learned counsel for the  
respondent Nos. 1 to 9 and Ms. T. Khan, learned Assistant  
Government Pleader for respondent Nos. 10 to 12.

2. This is an appeal preferred under Section 54 of the Land Acquisition Act, 1894. In this appeal, the appellant – the acquiring body challenges the judgment and award dated 22.07.2014 in Land Acquisition Case No. 27 of 1999 passed by the Court of Civil Judge, Senior Division, Yavatmal. In this award, the learned Reference Court enhanced the compensation @ Rs.376/- per square meter (@ Rs.35/- per square feet) after deducting 30% towards development purpose for Survey No. 63, admeasuring 5 Hectare and 34 R, situated at Village – Pratappur, Taluka – Babhulgaon, District – Yavatmal, along with all statutory benefits as permissible under law.

The facts leading to the filing of the present appeal are as under :

3. Respondent Nos. 1 to 9 (hereinafter referred to as the ‘claimants’) were the owners of land at Gat No. 63, admeasuring 5 Hectare and 34 R, Village – Pratappur, Taluka – Babhulgaon, District – Yavatmal.

4. The land of the claimants was acquired for the construction of buildings and houses for the Project Affected Persons of the Village – Khadaksawanga, in Land Acquisition Proceedings No LAC 4/47/1995-96 by Section 4 Notification, issued under the Land Acquisition Act, 1894 (hereinafter referred to as the Act), published on 09.05.1996.

5. It is pertinent to note that along with claimants land survey number 63, in the same notification and for the same purpose, the two adjoining lands at Survey Nos. 68 and 69 of the same village-Pratappur measuring 3.80 HR and 12.04 HR respectively were also acquired. The total lands acquired in the said Notification was 21.18 HR out of Survey Nos. 63, 68 and 69 of village Pratappur.

6. After the issuance of Section 6 Notification, the Land Acquisition Officer passed an Award on 10.10.1997. The Land Acquisition Officer valued the acquired land @ Rs.22,000/- per Hectare and awarded total compensation of Rs.1,69,171.00 including all statutory benefits.

7. Being dissatisfied with the grant of meager amount of compensation, the claimants filed a Reference under Section 18 of the Act for the enhancement of the amount of compensation. The claimants sought compensation @ Rs.1,614/- per square meter (less 1/5th deductions towards development).

8. The State Government and the acquiring body filed their written statements opposing the contention of the claimants for the enhancement of compensation. The learned Reference Court framed necessary issues and recorded evidence as adduced by the claimants. The claimants examined three witnesses i.e. claimant No.1 himself viz., Chandrakant Jagpal Thakre (AW-1) vide Exh. 97, Approved Valuer – Shri Sunil Keshavrao Chandakapure (AW-2) vide Exh. 110 and one Abhay B. Majumdar (AW-3) vide Exh. 112, who prepared lay-out map for the claimants. The State Government and the acquiring body preferred not to examine any witness.

9. The claimants' witness No.1 – (AW-1) during his

testimony brought on record the following documents:

***Exh. 98 to 100*** - A letter (and the postal receipts) to the collector, enquiring about N.A permission for his land.

***Exh. 101*** – 7/12 Extract from 1992 to 1998 showing barren land.

**Exh.103** – A Sale-Deed dated 29/03/1996 for a land admeasuring 1125 sq. ft., i.e. 104.55 sq. mtrs. at village Ganoli, Tq. Babhulgaon, District - Yavatmal, sold for a consideration of Rs.40,000/- (35.55/- per Sq. Ft.)

**Exh. 104** – A Sale-Deed for the land admeasuring 1. 21 HR situated at village- Mitnapur, Tq Babhulgaon, which was sold in the year 1999 for ₹ 150,000 and the agreement for which was entered in the year 1994.

**Exh. 105** –A judgment of the Reference Court in LAC No. 181 of 1999 of village – Khadaksawanga and the Notification under Section 4 of the Act was dated 15.12.1994 wherein the Reference Court awarded compensation @ Rs.35/- per square feet for a residential plot No. 31/3, area 158.85 square meter, built up area 53.25 square meter.

**Exh. 106** –A Judgment in LAC No. 321 of 2003 of village – Kolhi, Section 4 Notification dated 05.08.1999. Reference Court granted compensation @ Rs.2,15,000/- per HR.

**Exh. 107** is the certified copy of the map of village- Pratappur.

**Exh. 108** is the certified copy of the map of Tq. Babhulgaon.

10. It is the specific case of the claimants that the village Pratappur is situated at a distance of 3 km from the village Babhulgaon and is also situated on Yavatmal to Dhamangaon road. The subject land is suitable for the construction of buildings and houses. It is also stated that the acquired land is situated near the residential quarters of the employees of the Irrigation Department and the office of the Bembla Project Department.

11. The claimants' Witness No. 2 (AW-2), the approved valuer Shri Chandkapure stated about the valuation of the subject land and submitted his report at Exh. 111. According to this witness the fair market value of the subject land could be Rs.1,51,31,000/- on 09/05/1996 i.e. the date of section 4

Notification. The claimants' witness No. 3 (AW-3) produced a lay-out map prepared by him.

12. Considering the proximity in time and the situation, the learned Reference Court found Exh. 105 to be the best evidence in arriving at a true market value of the acquired land. The learned Reference Court also considered the non-agricultural potentiality of the subject land and by way impugned judgment and award dated 22.07.2014 directed the State and the appellant – the acquiring body to grant compensation for 5 Hectare and 34 R. of the acquired land @ Rs.376/- per square meter (after deducting 30% of the land for the development purposes).

13. The appellant – the acquiring body challenged this judgment and award in the present appeal, being the disproportionate, excessive and unrealistic compensation.

14. Shri Mangesh Kadu, learned counsel appearing for the acquiring body strenuously argued that the learned

Reference Court ought not to have considered the land at Exh. 105 at village -Khadaksawanga as a comparable land to the land in question. Firstly, there is a distance of about 5 kms. from village – Khadaksawanga and Pratappur. Secondly, there cannot be a comparison between a small plot of land with a house constructed thereon and a big chunk of land i.e. 5 Hectare and 34 R. Thirdly, land below Exh.105 was the residential property at Village Khadaksawanga which is an established village while the subject land is a barren and infertile land even non conducive for agricultural purposes. Furthermore, there was no permission for non-agriculture use to this land. There was no development in the vicinity of village - Pratappur.

15. The learned counsel substantiated his contention by pointing out the judgments of the Co-ordinate Bench of this court for the adjoining lands bearing Survey Nos. 69 and 68 of village-Pratappur, which were acquired by the same Notification and for the same purpose. (*Haribhau s/o Wamanrao Thakare vs. State of Maharashtra thr. the Collector,*

*Yavatmal & Ors*, F. A. No. 362 of 2012 decided on 29.06.2017 and *Shobha Kadu vs. State of Maharashtra thr. the Collector, Yavatmal & Ors*, F. A. No. 175 of 2012 decided on 31.10.2017).

16. Ms. Khan, learned Assistant Government Pleader appearing on behalf of respondent Nos. 10 to 12 also supported the case of the acquiring body.

17. Per contra, Shri Nakshane, learned counsel for the claimants, while supporting the impugned judgment and award, relied on one Award which was passed before the Lok-Adalat Panel wherein the acquiring body has settled the compensation @ Rs.500/- per square meter for the lands which are situated at village – Khadaksawanga, House Nos. 52, 53 and 55 on Plots admeasuring 39.30 square meters, 39.90 square meters and 70.90 square meters with constructions thereon admeasuring 11.70 sq. mtrs., 19.40 sq. mtrs. and 22.50 sq. mtrs. respectively in LAC No. 2/47/1995-96. The learned counsel also submitted that considering the proximity of the land in question and the land in the aforesaid Award

before the Lok Adalat, as both the villages i.e. Khadaksawanga and Pratappur are adjoining, hence the award passed by the Reference Court in this case cannot be faulted with.

18. We have considered the submissions advanced on behalf of both the sides and also perused the record. The following point arises for our consideration :

*“Whether the compensation, as has been enhanced by the learned Reference Court, reflects the true market value of the subject land at the time of publication of Notification under Section 4 of the Land Acquisition Act, 1894.”*

19. At the outset, the main object of the enquiry before the court is to determine the market value of the land acquired. It is well settled that the market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when let out in most advantageous manner (2008) 2 SCC 568 *Atma Singh Vrs. State of Haryana*). The just and fair compensation for acquired land

is to be awarded as per market value prevailing on the date of notification. Where a large area of the land is the subject matter of acquisition, the rate at which small plots are sold cannot be a good guide to decide the market value. At the same time, it cannot be laid down as an absolute proposition that the rate fixed for the small plots cannot be a basis for the fixation of the rate. The purpose for which the acquisition is being made is an important factor but it cannot be a basis for determining the market price in view of the bar under Section 24 (fifthly) of the Act of 1894. The determination of market price is governed by section 23 of the said act and the factors stated therein are required to be taken into consideration.

20. In the instance case, the land was acquired for the purposes of rehabilitation of Khadaksawanga, Tahsil – Babhulgaon, District – Yavatmal . The State Government has acquired Survey Nos. 63, 68 and 69 from Village – Pratappur, total acquiring area 21.18 HR under the Award dated 10.10.1997. The claimants land is bearing Survey No. 63. The table below would depict the other factors with regard to the

area of the land acquired, compensation awarded by the Land Acquisition Officer and compensation enhanced by the Reference Court etc.

Purpose : *For Rehabilitation of Khadaksawanga - Village, Tahsil – Babhulgaon, District – Yavatmal.*

*Total land acquired from village - Pratappur 21.18 HR under Award dated 10.10.1997.*

| Survey No.                    | Acquired Area | LAO Granted | Court Granted                                                                                              |
|-------------------------------|---------------|-------------|------------------------------------------------------------------------------------------------------------|
| 63<br>(land of the claimants) | 5.34 HR       | 22,000      | 376 Sq. Mt.<br>35 Sq. Ft.<br>37,66,000/- per Hector<br>(Award of Reference Court, impugned in this appeal) |
| 68                            | 3.80 HR       | 22,000      | Rs.1,15,000/- per Hector<br>(Award of Reference Court & confirmed by the High Court)                       |
| 69                            | 12.04 HR      | 28,000      | Rs.1,15,000/- per Hector<br>(Award of Reference Court & confirmed by the High Court)                       |

21. The claimants relied on the following documents in respect of their claim for enhancement of compensation :

**Exh. 101** – 7/12 Extract from 1992 to 1998 showing barren

land.

**Exh. 103** – Sale deed of Mouza – Ganoli sold @ Rs.40,000/- (Area 1125 Sq. Ft.) - (35.55/- per Sq. Ft.)

**Exh. 104** – A Sale-Deed for the land admeasuring 1. 21 HR of village-Mitnapur, Tq Babhulgaon, sold in the year 1999 for ₹ 150,000 and the agreement for which was entered in the year 1994.

**Exh. 105** –A judgment of Reference Court in LAC No. 181 of 1999 decided on 12/01/2009 of village – Khadaksawanga and the Notification under Section 4 of the Act was dated 15.12.1994 wherein the Reference Court awarded compensation @ Rs.35/- per square feet for a residential plot No. 31/3, area 158.85 square meter out of which built up area is 53.25 square meter

**Exh. 106** –A Judgment in LAC No. 321 of 2003 for a land at village – Kolhi, Section 4 Notification dated 05.08.1999. Reference Court granted compensation @ Rs.2,15,000/- per HR.

**Exh. 107** is the certified copy of the map of Tq. Pratappur.

**Exh. 108** is the certified copy of the map of Tq. Babhulgaon.

22. The Reference Court has found Exh. 105 to be the most relevant pursuant to the time and the location for deciding the true market value of the subject land i.e. Survey No. 63. Exh. 105 is a judgment of the Reference Court in LAC No. 181 of 1999 of village – Khadaksawanga and the Notification under Section 4 of the Act was dated 15.12.1994 wherein the Reference Court awarded compensation @ Rs.35/- per square feet. We fail to understand as to how the Reference Court considered a small residential plot of land No. 31/3, Area 158.85 square meter out of which built up area is 53.25 square meter at Khadaksawanga as a comparable instance for the subject land which is admittedly a barren land admeasuring 5.34 HR. i.e. 53,400 sq. mtrs., situated in a deserted village Pratappur, which is at a distance of 5 kilometers from the village Khadaksawanga, an established village.

23. A perusal of Exh. 105 would further reveal that the Land Acquisition Officer determined the compensation of Rs.1,11,266/- to the appellant therein and the Reference Court

enhanced it @ Rs.35/- per square feet for the open plot and @ Rs1,100/- per square meter for the constructed area. In the case in hand, the compensation determined by the LAO is at the rate of Rs. 22,000/- per Hectare, which itself would indicate a tremendous difference between the two lands, and therefore can not be suitable for determining the true market value of the subject land. No purchaser would have been ready to pay for the barren land at the rate of Rs. 376/- per sq. mtrs. i.e. 37,66,000/- per Hectare.(Rs. 35/- per sq. ft.)

24. At this juncture, it would be advantageous to refer to the judgment of the Hon'ble Apex Court [in the case of Ravinder Narain and another v. Union of India](#), reported at (2003) 4 SCC 481 wherein it was held that where a large chunk of land is the subject-matter of acquisition, the rate at which small plots are sold cannot be said to be a safe criterion. Nevertheless, the Court was of the view "it cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may, in appropriate cases, be open to the adjudicating court to make

comparison of the prices paid for small plots of land. However, in such cases necessary deductions/ adjustments have to be made while determining the prices".

25. In the instant case, it is not that there was no other material available before the learned reference court. The learned Reference Court rejected Exh. 104 i.e. a sale instance of village – Mitnapur for the reason that the said land is not identical to the land in question. Exh. 106 was also rejected on the ground that the judgment in LAC No. 321 of 2003 is regarding village – Kolhi and there is nothing on record to show as to how the land at village – Kolhi is comparable to land at Pratappur. Exh. 103 is a sale instance of land situated at village – Ganoli, which is also rejected on the same ground. The learned Reference Court has relied on Exh. 105 only.

26. We have carefully gone through all these documents and found that the learned reference Court has rightly rejected Exh. 103 and Exh. 106, being not comparable to the subject land. However, we find that, the land below Exhibit 104 of

village - Mitnapur, Tq. - Babhulgaon which is situated near the village Pratappur, in the absence of any other comparable instance of land on the record, could have been a good guide to decide the market value of the acquired land. The land below Exhibit 104 is admeasuring 1. 21 HR was sold in the year 1999 for ₹ 150,000, and the agreement for which was entered in the year 1994. In the absence of any other comparable instance of sale or any judgment, in our considered view, Exhibit 104 could have been a good guide to reach to a correct market value to the subject land instead of relying on the sale instance of a small plot of land i.e. a house property and granting unconceivable, unreasonable and unrealistic amount of compensation.

27. The learned reference Court in para 12 of its judgment observed that the evidence of the claimants' witness No.1 with regard to the N. A. potentiality of the acquired land has remained unchallenged. It is to be noted that except the bare words of the claimants' witness, the learned counsel for the claimants could not point out any other material on record to show the non-agricultural potentiality of the subject land.

True it is that the uncontroverted facts need no proof. However, at the same time the Court is at its discretion not to rely on the same and to ask for any other proof for such facts. The Courts while determining the market value of the land, the adjudication would not be based on mere admissions and denial of the parties, the Court has to decide it factually and objectively. The Court may take judicial notice of some of the factors as are permissible in law and at the same time may ask the claimant for any other better proof. In the instant case, while determining the market value, the awards for the other two adjoining lands i.e. Survey Nos. 68 and 69 were already passed by the Reference Court. The Court is empowered to ask for better proof . On this point, it would be beneficial to look into to the proviso to Section 58 of the Indian Evidence Act. Section 58 reads thus :

*“58. Facts admitted need not be proved. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have*

*admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.*”

28. A careful perusal of the material on record, we do not see any plus factor in the subject land to justify the market value as fixed by the learned Reference Court. The approved valuer, the claimants’ witness No.2 vide his Report Exh. 111, fixed the market value at the rate of Rs. 1,51,31,000/-. However, a perusal of his Report, would reflect that he has only considered 7/12 extracts of the subject land and Section 4 Notification. There was no other material for his consideration to assess the N.A. potentiality of the subject land. The sale instances which the learned valuer relied on as per Annexure A in his report are absolutely un-comparable sale instances, being of far away villages.

29. Shri Kadu, the learned counsel for the appellant – acquiring body, placed reliance on the judgment of the Co-ordinate Bench of this Court in the First Appeal No. 362 of 2012 dated 29.06.2017, for the land Survey No. 69,

admeasuring 12 Hectare 04 R of village – Pratappur which is adjoining to the land in question which according to him could be the best piece of evidence to decide the market value of the subject land. The land in this judgment was acquired under the same Notification and for the same purpose i.e. rehabilitation of the Project Affected Persons of village – Khadaksawanga. In the said judgment, the learned Co-ordinate Bench of this Court relied on the Awards in LAC Nos. 320 of 2000 and LAC 280 of 2000 wherein the lands were acquired by Notification under Section 4 of the Act issued on 15.09.1994 for the lands situated in village – Thalegaon, an adjoining village to the village, Pratappur, as the comparable instances for fixing the market price of the subject land, considering the proximity in time angle and the proximity in situation angle.

30. It is pertinent to note that the aforesaid judgment in the First Appeal No. 362 of 2012 decided on 29.06.2017 has been further relied on by the Single Bench of this Court in the First Appeal No. 175 of the 2004 (*Shobha Kadu V. State of Maharashtra*) decided on 31.10.2017, while deciding

compensation for the land at Survey No. 68, admeasuring 3.80 HR of village - Pratappur, Tq. Babhulgaon, Dist Yavatmal, which is the adjoining land to the subject land of Village - Pratappur , which was acquired under the same notification and for the same purpose i.e. the rehabilitation of the Project Affected Persons of the village Khadaksawanga.

31. In the instant case, since the land acquired is situated in village – Pratappur, in the absence of any other sale instance in the village Pratappur, in the considered view of this Court, the correct market value for the subject land ought to have been the same as has been decided for the other two adjoining lands, considering the view taken by the Co-ordinate Bench of this Court in First Appeal No. 362 of 2012 dated 29.06.2017, for the acquired land Survey No. 69, admeasuring 12 Hectare 04 R of village – Pratappur which is the adjoining land of the subject land in question.

32. It is to be noted that the subject lands in the First Appeal Nos. 362/2012 and 175/04, i.e. the lands adjoining to

the land in question are agricultural dry crop lands. In such circumstances, we do not see any reason to take a different view from the view taken by the learned Co-ordinate Bench of this Court. It is evident from record that the land in question, i.e. Survey No. 63 is certainly not better in quality than the lands of the adjoining Survey Nos. i.e. 68 and 69 of Village - Pratappur. Therefore, it cannot fetch a greater value than the other two adjoining lands.

33. In our view, the learned Reference Court committed a gross error in awarding the exorbitant amount of compensation for a big chunk of barren land lacking non-agricultural potentiality. The learned Reference Court has erroneously relied on a small plot of land with a house constructed thereon in village – Khadaksawanga as a comparable instance for deciding the true market value of the land in Pratappur village, which is situated at a distance of 5 kms. from village – Khadaksawanga and admeasuring 5 Hectare and 34 R i.e. 53400 sq. mtrs. and 5,74,972.81 square feet.

34. It is also to be noted that the learned counsel for the claimants Shri Nakshane, relied on one Award which was passed before the Lok-Adalat Panel wherein the acquiring body has settled the compensation @ Rs.500/- per square meter for the lands which are situated at village – Khadaksawanga, House Nos. 52, 53 and 55 on Plots admeasuring 39.30 square meters, 39.90 square meters and 70.90 square meters with constructions thereon admeasuring 11.70 sq. mtrs., 19.40 sq. mtrs. and 22.50 sq. mtrs. respectively in LAC No. 2/47/1995-96. In our firm view, this would also not of any assistance to the claimants' considering the enormous difference between the nature, size and the locations of the lands.

35. Thus, in the light of the aforesaid discussion and on a reconsideration of the entire material on record, the point as raised is answered by holding that the claimants' would be entitled to receive compensation @ Rs.1,15,000/- per Hectare with all statutory benefits and interest as permissible in law. The judgment of the Reference Court is liable to be modified to that extent.

36. Accordingly, the judgment and award dated 22.07.2014 in Land Acquisition Case No. 27 of 1999, is modified by holding the claimants' entitled to compensation for the acquired land @ Rs.1,15,000/- per Hectare with all statutory benefits and interest as permissible in law. Needless to mention that the appellant – Acquiring Body shall be at liberty to deduct the amount, if any, paid towards compensation to the claimants. First Appeal is allowed in aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

**JUDGE**

**JUDGE**

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